

11 MAY 2004



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In re Application of :  
BACHYNSKY et al. :  
U.S. Application No. 09/744,622 :  
PCT No.: PCT/US99/16940 : DECISION ON PETITION  
Int. Filing Date: 27 July 1999 : UNDER 37 CFR 1.47(b)  
Priority Date: 27 July 1998 :  
Attorney Docket No.: HO-P01615WO0 :  
For: CHEMICALLY INDUCED  
INTRACELLULAR HYPERTHERMIA

This is a decision on applicants' "Renewed Petition under 37 C.F.R. 1.47(b)" filed 01 July 2003 to accept the application without the signature of the inventors, Nicholas Bachynsky and Woodie Roy. No petition fee is due.

**BACKGROUND**

On 27 July 1999, applicants filed international application no. PCT/US99/16940 which claimed a priority date of 27 July 1998. A proper Demand was filed with the International Preliminary Examining Authority prior to the 19th month from the earliest claimed priority date. Accordingly, the thirty-month time period for submitting the requisite basic national fee in the United States of America was extended to expire 30 months from the priority date, i.e., 29 January 2001.

On 26 January 2001, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1) and a copy of the international application.

On 12 March 2001, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed. The notification set a one-month time limit in which to respond.

On 05 September 2001, applicants filed "Petition under 37 C.F.R. 1.47(b)" and a three-month extension of time. The petition was dismissed in a Decision dated 08 November 2001.

On 07 May 2002, applicants filed Renewed Petition under 37 C.F.R. 1.47(b) and a four-month extension of time. The petition was dismissed in a Decision dated 27 November 2002.

On 27 November 2002, applicants filed Renewed Petition under 37 C.F.R. 1.47(b). The petition was dismissed in a Decision dated 12 May 2003.

On 01 July 2003, applicants filed the present renewed petition under 37 C.F.R. 1.47(b).

### DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(i); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the nonsigning inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor; (5) proof of proprietary interest in the application; and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. The 37 CFR 1.47(b) applicant has satisfied the requirements of items (1),(2),(3), (4) and (6).

Concerning Item (5), petitioner has demonstrated that applicant has a proprietary interest in the invention.

### CONCLUSION

The renewed petition under 37 CFR 1.47(b) is **GRANTED**.

The application will be given an international filing date of 27 July 1999 under 35 U.S.C. 363, and a date of **07 May 2002** under 35 U.S.C. 371(c).

As provided in 37 CFR 1.47(b), a notice of the filing of this application will be forwarded to the nonsigning inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(b) will be published in the Official Gazette.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision.

  
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For: CHEMICALLY INDUCED INTRACELLULAR HYPERTERMIA

Dear Woodie Roy:

You are identified as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(b) and 35 U.S.C. 118. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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Attorney Docket No.: HO-P01615WO0  
For: CHEMICALLY INDUCED INTRACELLULAR HYPERTERMIA

Dear Nicholas Bachynsky:

You are identified as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(b) and 35 U.S.C. 118. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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